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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x

5 UNITED STATES OF AMERICA,

6 v.

7 17 Cr. 630 (ED)

8 KARL SEBASTIAN GREENWOOD,

9 Defendant.

10 Hearing
11 -----x

12 New York, N.Y.
13 April 11, 2023
14 2:00 p.m.

15 Before:

16 HON. EDGARDO RAMOS,

17 District Judge

18 APPEARANCES

19 DAMIAN WILLIAMS

20 United States Attorney for the
21 Southern District of New York

22 BY: KEVIN MEAD
23 NICHOLAS S. FOLLY
24 JULIANA MURRAY
25 Assistant United States Attorneys

WEDDLE LAW PLLC

Attorneys for Defendant

BY: JUSTIN S. WEDDLE
BRIAN WITTHUHN
JULIA CATANIA
-AND-

PATTERSON BELKNAP WEBB & TYLER, LLP

Attorneys for Defendant

BY: MUHAMMAD FARIDI

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1 (Case called)

2 MR. MEAD: Good afternoon, your Honor. AUSA Kevin
3 Mead, Nicholas Folly and Juliana Murray for the government.

4 THE COURT: Good afternoon.

5 MR. WEDDLE: Good afternoon, your Honor. I'm Justin
6 Weddle. I'd like to acknowledge some of my co-counsel who are
7 in the courtroom, but they're sitting at the table with me,
8 Muhammad Faridi of Patterson Belknap firm, and my colleague
9 Brian Witthuhn is in the front row, and my colleague Julia
10 Catania from Weddle Law will be joining us, but she's still in
11 the security line, and of course my client Mr. Greenwood is
12 here.

13 THE COURT: And good afternoon to you all. So this
14 matter is on for a status, and I guess the primary, if not
15 sole, reason we're getting together this afternoon is to make a
16 legal determination as to whether in the calculation of
17 Mr. Greenwood's applicable guidelines range we should include
18 that amount of allegedly fraudulent monies that were obtained
19 in connection with the entire OneCoin scheme, or whether we
20 should limit it to only those illicit funds that were obtained
21 from U.S.-based victims.

22 But let me begin by asking, has the government or the
23 defense calculated the applicable guidelines range from either
24 prospective? Can you give me some sort of a ballpark as to
25 what the guidelines would like if I were to accept defendant's

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1 position, or whether if I were to accept the government's
2 position. By the way, you don't have to stand. You can remain
3 seated.

4 MR. MEAD: I'm not sure we have the exact numbers,
5 your Honor. If we were to include all of the victims, meaning
6 including the international victims, the defendant's loss
7 amount would be well-beyond the top of the loss amount table of
8 \$550 million. My recollection is that he would max out on the
9 guidelines. Even after acceptance of responsibility, even
10 after the three point reduction, he'd still be at 43, and would
11 therefore be at a guideline range of 60 years, which would be
12 the statutory maximum. His guideline under the domestic loss
13 only would still be quite high. I just don't have the exact
14 numbers handy unfortunately.

15 THE COURT: Mr. Weddle, do you have an idea?

16 MR. WEDDLE: Well, your Honor, fundamentally these are
17 factual issues, and the government bears the burden of proof.
18 So far I believe consistent with the government's legal
19 position, the government has been focusing on what guidelines
20 would look like if they're considering global conduct. So I
21 don't think that the U.S. number has been a focus of their
22 investigation or their analysis so far. And I think if your
23 Honor grants our motion and agrees with us on the scope of the
24 guidelines analysis, we would have a discussion with the
25 government about what is there in the discovery that nails this

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1 down. And we may or may not have disputed factual issues, and
2 hopefully we can narrow any disputed factual issues that there
3 are. But in their opposition brief, they estimated a number of
4 \$50 million. But either way if your Honor decides -- well, if
5 your Honor decides the legal issue in our favor, we're still
6 talking about a very significant sentencing guidelines range
7 for Mr. Greenwood, and he understands that. The prosecution's
8 sentencing guidelines range, quite frankly, is not of a human
9 scale, and so there's some aspects of this that are academic
10 because I think -- I hope that your Honor would not be inclined
11 to impose a 60-year sentence on Mr. Greenwood, even if that's
12 what the guidelines called for based on a global analysis of
13 the OneCoin business. Mr. Greenwood is 46-years old. I don't
14 think it's within human scale to impose sentencing like that.
15 He's already served nearing five years in prison -- or in jail,
16 pretrial detection, including some horrific circumstances. But
17 if it was a \$50 million number or a \$10 million number, we're
18 still in the range, depending on enhancements which I think is
19 also effected by this legal determination, we're still in a
20 range of something like ten years.

21 THE COURT: Okay. So it's your motion, Mr. Weddle.
22 And so obviously you rely primarily on the Second Circuit case
23 *Azeem*. That case seems to me to be an easy one to distinguish
24 from this case, because in that case there was conduct that was
25 clearly targeted at the United States, and conduct that was

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2 clearly targeted towards another -- beginning in one country
3 and targeted towards another country, not the United States.

4 Isn't this a very different type of case, obviously
5 understanding and accepting the Second Circuit's determination
6 that purely external conduct should not be counted under the
guidelines here?

7 MR. WEDDLE: I submit that it's the same case, your
8 Honor.

9 THE COURT: The same case?

10 MR. WEDDLE: It's the same case. Because in *Azeem*, it
11 was the same co-conspirators, the same conduct; that is,
12 trafficking in Pakistani heroin, and different victimization.
13 So the United States was a victim of the trafficking into the
14 United States, and Egypt was a victim of the society basically
15 in Egypt was the victim of trafficking into Egypt. But the
16 Second Circuit said it was the same course of conduct; and
17 therefore -- except for the guidelines decision to exclude
18 foreign criminal conduct from its analysis, it would otherwise
19 have qualified as relevant conduct under the guidelines based
20 on that analysis that it was part of the same course of
conduct. The prosecutors here have said --

22 THE COURT: But in that case did the government rely
23 on -- or did they define the crime of conviction as including
24 that extraterritorial conduct?

25 MR. WEDDLE: The indictment was drawn more narrowly,

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1 but the prosecution -- the district court in that case
2 specifically found that the Egypt conduct was part of the same
3 crime, was part of the crime of conviction. And we submitted
4 that -- we cited this *Khodadad* case in the Second Circuit where
5 the U.S. Attorney's office conceded error based on *Azeem* in a
6 different case. But in that case, the prosecution's brief to
7 the Second Circuit described *Azeem* in exactly that way. They
8 said in *Azeem* it was part of the same crime. The district
9 court found that it was part of the same crime, but it was
10 nevertheless plain error to include the non-U.S. criminal
11 conduct in the *Khodadad* case, and the case needed to be
12 remanded for resentencing.

13 So the district court conceptualized the conduct as
14 the same crime, and the U.S. Attorney's office a few years
15 later in *Khodadad* conceptualized the *Azeem* case of being about
16 the same crime, but improperly including in the guidelines
17 analysis what is foreign criminal conduct. I think it's the
18 same thing here, your Honor. Because if, for example, there is
19 a person selling OneCoin -- a person in Bulgaria selling
20 OneCoin using fraudulent representations to somebody in China,
21 that is outside the scope of the U.S. wire fraud statute. The
22 U.S. wire fraud statute is a statute of domestic application.
23 Second Circuit has said that. And that was based on the *RJR*
24 *Nabisco* case coming out of the Supreme Court as well, but it's
25 a statute of domestic application. The *Bascunan* case, I'm

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2 probably mispronouncing the case in the Second Circuit
3 specifically said that for purposes of the wire fraud statute,
4 and for purposes of analyzing extraterritoriality, the court
5 should look at the focus of the statute. And in that case the
6 Second Circuit said the focus of the wire fraud statute,
7 Section 1343, was not a scheme, but it's the use of U.S. wires
in furtherance of the scheme.

8 THE COURT: Was there a money laundering count in that
9 case?

10 MR. WEDDLE: In the *Bascunan* case, I don't recall off
11 the top of my head, your Honor. In my example of selling
12 OneCoin to a victim in China from Bulgaria, there's no use of
13 the U.S. wires. If people in Bulgaria are selling OneCoin
14 using misrepresentations and U.S. wires to victims in the
15 United States; then, yes, that is a U.S. wire fraud crime, and
16 that's why Mr. Greenwood pled guilty. So there should be no
17 mistake here that Mr. Greenwood has pled guilty because he
18 believes he's guilty of the crimes. It's just that to analyze
19 the proper punishment for that crime, this Court should not be
20 seeking to sweep into a domestic criminal statute, u.s. wire
21 fraud, conduct that is not a violation of U.S. law, but is
22 instead a violation perhaps of Chinese law or Bulgarian law or
23 something like that.

24 THE COURT: But taking your example, Mr. Weddle,
25 someone from Bulgaria defrauds someone in China by selling them

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2 bogus cryptocurrency, but the proceeds that were obtained from
3 the victim in China then laundered through the United States,
4 isn't that what makes this case different?

5 MR. WEDDLE: There are two pieces to that if I may,
6 your Honor.

7 THE COURT: Sure.

8 MR. WEDDLE: And I think the short answer is no. If
9 the money -- let's take this example, the same hypothetical.
10 If the perpetrator of the fraud in Bulgaria defrauds a victim
11 in China and says, please wire your payment to this shell
12 company incorporated under New York law with a New York bank
13 account, then that is part of a domestic wire fraud; because
14 that fraud integrally itself uses U.S. wires.

15 And that example, your Honor, that hypothetical is a
16 description of several of the district court cases that we've
17 cataloged in our appendix, but were cited by the government,
18 several of those cases are neatly explained by that fact. That
19 is, that the perpetrators, even if they were outside the United
20 States, told their victims to send the money to the United
21 States and send the money into U.S. entities, U.S. bank
22 accounts. So if you're making use of U.S. wires as a core part
23 of accomplishing that fraud; then, yes, it is part of the
24 fraud, and we would agree that it should be -- that such a
25 transaction would be included in the guidelines analysis
because it's within the scope of the domestic wire fraud crime.

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1 So the description -- and I know your Honor was not
2 trying to describe anyone's position in your opening remarks,
3 but our position on what the *Azeem* case means and what our
4 position is on the proper analysis of the guidelines is not
5 limited to U.S.-based victims. It's a bit more complicated
6 than that. It's not much more complicated than that. But it
7 would include a situation like I've just described where an
8 integral part of the fraud is, please send your money to this
9 U.S. bank account. That is the case in several of those
10 district court cases.

11 It would also include -- and this was the case, for
12 example, in the *Pasquantino* case from the Second Circuit where
13 people in the United States, physically in the United States
14 conducted a fraud that victimized the government of Canada. If
15 the perpetrators are physically in the United States conducting
16 a wire fraud, then all of their victims, foreign and domestic,
17 are part of that domestic wire fraud, because it's being
18 conducted integrally from the United States with U.S. wires.

19 THE COURT: So the implication or the invocation of
20 the money laundering statutes play no role in the analysis?

21 MR. WEDDLE: Let me turn to the money laundering
22 statute. The money laundering analysis does not change the
23 result, but the analysis is different. Fundamentally if we're
24 talking about money laundering, money laundering is not a
25 colloquialism. It is a term of art defined by statute. It is

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2 defined in Section 1956. Its description is, I'm going to
3 simplify it, but its description is essentially conducting a
4 financial transaction with the proceeds of a specified unlawful
5 activity. It's not any money. It can't be any money, and it
6 can't be the proceeds of crime. It has to be the proceeds of a
7 specified unlawful activity. I can give an example to try to
8 illustrate this, your Honor.

9 THE COURT: Sure.

10 MR. WEDDLE: Are you familiar with the story of *Oliver
Twist*. The musical *Oliver*.

11 THE COURT: Can I have more gruel.

12 MR. WEDDLE: That's basically it. Imagine this
13 hypothetical. There's a taxi driver in London who makes the
14 money, and he sends it the United States. And he says, please
15 launder this for me, sends it to *Gilbert Armenta* or whoever.
16 And he says, please launder this for me. And that person
17 engages in financial transactions in the United States using
18 U.S. entities, moves it around. That is not money laundering.
19 Notwithstanding someone saying it's money laundering, asking it
20 to be laundered, engaging in shell corporation transactions.
21 Why? Because it's the proceeds of driving a taxi. It's not
22 illegal. Okay.

23 To take the *Oliver Twist* comparison. *Oliver Twist*
24 involves an orphan, but the orphan got mixed up with a crowd,
25 pickpocketing ring of orphans supervised by an older man named

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2 Fagin. So I think it was -- what was his name. I'm just
3 blanking on it. The *Artful Dodger* was the most successful
4 pickpocket. If the *Artful Dodger* running around the streets of
5 London picking pockets on behalf of Fagin and his crew, takes
6 that money and sends it to *Gilbert Armenta* and says please
7 launder this for me. And they put it through a bunch of shell
8 corporations in Florida and send it back to the *Artful Dodger*,
9 once again, your Honor, that is not money laundering. And it
10 doesn't matter that it's the proceeds of a crime in London.
11 He's running around pickpocketing people. It is not money
12 laundering because it is not the proceeds of a specified
unlawful activity.

13 I'll take it one step further, your Honor. Part of
14 that story involved *Oliver Twist* running away from that
15 pickpocketing ring. And Fagin and his co-conspirators went off
16 to kidnap *Oliver Twist* and bring him back. Now if Fagin took
17 money that he made from that scheme and sent it to *Gilbert*
18 *Armenta* and said please do a bunch of transactions with this
19 and launder this money for me, that would be a money laundering
20 crime.

21 THE COURT: Wait. Wait. Did *Oliver Twist* ever leave
22 London?

23 MR. WEDDLE: No.

24 THE COURT: So he was kidnapped in London, and the
25 crime was committed in London?

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2 MR. WEDDLE: Yes.

3 THE COURT: And the money was sent to the U.S.

4 MR. WEDDLE: But I'll tell you why that's a money
5 laundering crime and why it's very different from our case.
6 Because under the money laundering statute, part of the
7 definition of specified unlawful activity, includes a violation
8 of a foreign criminal law falling into one of a number of
9 enumerated categories. One of those categories is kidnapping.
10 So violating a U.K. anti-kidnapping crime is a specified
11 unlawful activity, so is domestic U.S. wire fraud, so is the
12 situation in the *Lazarenko* case which involved, I think it was
13 a former president of Ukraine, who made proceeds, not from
14 fraud -- well, he was charged with fraud, that part was
15 reversed -- but his proceeds from extortion were a proper
16 predicate for money laundering because a violation of foreign
17 crime involving extortion is defined as specified unlawful
18 activity. And that is, your Honor -- and I have my book here.
19 I could hand it to your Honor. It's 1956 (c)(7)(B) is the
20 portion of specified unlawful activities that involve an
21 offense against a foreign nation. But it doesn't just say an
22 offense against a foreign nation. It says an offense against a
23 foreign nation involving, and then there are a bunch of
24 romanette paragraphs. They include extortion. They include
25 kidnapping. They include bribery. They include murder. They
include drug crimes. You know what they do not include, fraud,

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2 and that is the difference. It's not a specified unlawful
3 activity as a violation of foreign law because simple fraud is
4 not in this list, even though *Fagin*'s kidnapping is,
pickpocketing is not, fraud is not.

5 THE COURT: Even though pickpocketing is illegal in
6 London.

7 MR. WEDDLE: Exactly, your Honor. Because the money
8 laundering statute does not cover engaging in financial
9 transactions in the proceeds of any crime under anyone's law.
10 It covers engaging in financial transactions with the proceeds
11 of specified unlawful activities. The specified unlawful
12 activity in this case is wire fraud, a U.S. crime of domestic
13 application. So any proceeds that come from U.S. victims using
14 U.S. wires, any money that involves my example of, if a
15 perpetrator said, send your money from China to New York in
16 order to pay for your OneCoin, that would be the proceeds of a
17 U.S. wire fraud. Or, if there was a perpetrator in New York
18 calling people in China saying buy OneCoin, here are a bunch of
19 false statements about it.

20 THE COURT: Weren't there perpetrators in the United
21 States once upon a time selling OneCoin and sending their
22 message out into the ether, which arguably crossed the border
23 to Canada, South America, Europe, etc.

24 MR. WEDDLE: Well, it's the government's burden of
25 proof. I anticipate that they will be able to establish that

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2 there were such people. And those losses are part of what we
3 think is covered the guideline.

4 THE COURT: How do we limit that? How do we say,
5 okay, it went this far, but no further?

6 MR. WEDDLE: I think it's actually quite simple. I
7 mean, these are wire transactions.

8 THE COURT: They're wire transactions, but the scheme
9 that's alleged is essentially lying about the bona fides of a
10 particular cryptocurrency, and the wires were used in
11 connection with that scheme. And if the message about the
12 falsity of the cryptocurrency traveled over interstate borders,
13 why shouldn't the entirety of that wrongful activity be
14 included?

15 MR. WEDDLE: The guidelines are -- unfortunately, the
16 guidelines in a fraud case are typically based on dollar
17 losses. So we're not talking about sort of messages floating
18 around in the ether. We're talking about OneCoin losses. So
19 the OneCoin losses should be determinable based on records and
20 financial transactions. You can't really sell OneCoin to a
21 victim in the United States without the victim in the United
22 States creating a digital record of the sale, and presumably a
23 digital record of those proceeds of that sale going somewhere.

24 Now, they have to get to their destination before they
25 can be laundered, your Honor, because otherwise there's a
merger problem in the analysis. But if they have gotten to the

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2 their destination, let's say somebody is sitting in Bulgaria
3 and sells OneCoin to a victim in Nebraska, the victim in
4 Nebraska sends a wire transfer in order to pay for that
5 OneCoin. That would be part of a proper analysis of the
6 guidelines in my view if the government has evidence to support
7 it. If that money made its way to Bulgaria and then someone in
8 Bulgaria said let's take these proceeds of the U.S. victims, of
9 the U.S. fraud and send it back to the U.S. to be laundered;
10 then, yes, that is the proceeds of a U.S. wire fraud, and so
that would be properly included.

11 There's a disconnect as far as I've seen it in the
12 government's proof that I've seen, and I think this was fully
13 argued by Mark Scott so I don't want to belabor the point. But
14 just to say -- for someone to say, for example, *Gilbert Armenta*
15 to say, I had an understanding or whatever, I'm not that
16 familiar with the *Gilbert Armenta* case. But if hypothetically
17 said, I had an understanding that the money that was coming to
18 me came from OneCoin sales, that really does not tell you
19 whether those are the proceeds of a specified unlawful activity
20 or not. There are some proceeds of OneCoin sales that are the
21 proceeds of U.S. wire fraud, and those are the ones that I've
22 described. And it's a little bit more complicated than just
23 U.S. victims because I think it falls into a couple of buckets;
24 U.S. victims as well as -- let me back up -- a couple of
25 buckets as we described them in our briefing.

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2 The first bucket is U.S. victims regardless of where
3 they're targeted from. So a U.S. victim targeted from Bulgaria
4 is equally a part of a domestic wire fraud as a U.S. victim
5 targeted from Kansas. The second bucket involves targeting of
6 victims regardless of where they're located from the U.S. or
7 integrally using U.S. wires to do it. Like in my example when
8 they said, send all the payments to New York. That is
9 targeting people around the world from the U.S.

10 If there are OneCoin salesmen, for example, who are
11 co-conspirators in the charged crime, and they are selling to
12 people in Florida and in London, if the government has evidence
13 of that, I would agree that that should be included in the
14 sentencing guidelines analysis.

15 THE COURT: What quantum of evidence is going to
16 satisfy you that a particular victim was victimized in a
17 particular way, in a particular place?

18 MR. WEDDLE: I think we're jumping ahead to stage two
19 of my organizational structure. Off the top of my head -- and
20 I don't want to be bound by this because I would want to look
21 up the cases, but I think the standard is a preponderance of
22 the evidence. And I think that for a loss amount -- I don't
23 know what the terminology is, but a reasonable approximation is
24 appropriate. And we all know that often times it doesn't
25 matter. I mean I don't think we're going to calculating losses
down to the dollars and cents because we've got cutoffs in the

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2 loss table at -- I think it's 10 million. I have it here.
3 There's a cutoff at 9 million, 500. There's a cutoff at 25
4 million. There's a cutoff at 65 million. So the government's
5 estimate in its brief is about 50 million. I'm not conceding
6 that they can prove that, but it only matters that they can't
prove it if the proof is going to fall below 25 million.

7 THE COURT: It sounds like to me, and tell me if I'm
8 wrong, that you will not be satisfied unless the government is
9 able -- or that the way that you would want to quantify, not
10 only the amount of loss, but where that loss originated is only
11 where the wires were initiated, correct? So wherever victims
12 initiated the wires from -- and assuming that those wires were
13 initiated in foreign countries, to the extent that that
happened, those will not count from your perspective?

15 MR. WEDDLE: A wire initiated in a foreign country?

16 THE COURT: Correct.

17 MR. WEDDLE: Not going to the United States in anyway
18 and not using U.S. dollars?

19 THE COURT: I don't know how far you want to follow
20 the money, but let's say yes.

21 MR. WEDDLE: This is a very unusual case as we've said
22 in our brief. I think even granting the government its
23 estimate, we are to borrow phrase from, I think this is from
24 Morrison, we are in a situation of the domestic tail trying to
25 wag a foreign dog. And the numbers that the government is

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2 positing, without getting to stage two, we're going to look at
3 the proof. The numbers that the government is positing
4 involves at most I think one percent U.S. related conduct, and
5 99 percent not. The closest I have been able to find in all
6 these cases that we've been citing in our briefs is Azeem
7 itself, which was 25 percent U.S. criminal conduct; 75 percent
8 Egyptian criminal conduct. And the Second Circuit clearly you
9 shouldn't be using that other 75 percent. It's a one kilogram
case. It is not a four kilogram case.

10 So we are in a unusual situation where there's this
11 tiny bit of U.S. conduct, which I still think is going to
12 result in a sentencing guidelines range that I'm going to ask
13 your Honor not to impose because it's going to be too high, but
14 it's going to be a significant range. But I think that the
15 level of proof here I still think is going to be -- I'm
16 predicting it's going to be relatively straightforward, because
17 these are not cash transactions, so they've got to move through
18 bank records. There are all kinds of cases where people
19 extrapolate from sampling and they interview a subset of
20 people.

21 I've done cases like this as a prosecutor, your Honor,
22 where we had thousands of victims of advance fee scheme. There
23 were markers essentially of the methodology, the phone numbers
24 that were being used, and we sampled a certain number of
25 victims and we came up with a number. So all of those tools I

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2 think are available in the sentencing context. But what I
3 don't think is available is the government to say, well, we
4 call it global. So because we call it global, we call it a
5 global OneCoin fraud, that trumps the domestic reach of the
wire fraud statute.

6 THE COURT: I think they do a little bit more than
7 this. They say, we call it global and that's how we charged it
8 and that's what he pled to. Let me ask you this, Mr. Weddle.
9 The government ask me to look at it from the guidelines
10 perspective, in one of three ways. One, the total conduct that
11 they want to assert is relevant here is part of the count of
12 conviction. The second part of their argument is that even if
13 it's not, it's relevant conduct. So why isn't it relevant
14 conduct? I can take into account even if it's not prosecutable
15 in the United States if it's a crime, I can take it into
16 account, can't I?

17 MR. WEDDLE: No, that's exactly what Azeem says you
18 should not do. Azeem looked at the definitions of relevant
19 conduct. And there's two description of relevant conduct in
20 the guidelines that everyone agrees are almost always, I would
21 say, in this case too, a distinction without a difference, same
22 course of conduct or common scheme and plan. Those are
23 relevant conduct. And Azeem says, those don't mean non-U.S.
24 criminal conduct. It has to be criminal conduct. We know that
25 relevant conduct is not just any conduct that's part of a

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2 common scheme or plan or part of a course of conduct. It has
3 to be criminal conduct. And *Azeem* says, it has to be U.S.
4 criminal conduct.

5 The prosecutors -- I think that there's a serious
6 circularity issue with the prosecutors' argument, which we said
7 in our briefs. I'm sure your Honor understands that's our
8 argument. The prosecutors cannot, I submit -- and there are
9 lots of reasons for this and principles that it would violate
10 if they could, which I'll go through in a minute. But they
11 cannot just say, it's a global fraud that we've charged as a
12 1343 violation; and therefore in this case 1343 has global
13 reach. The statute we know is a statute without
14 extraterritorial reach. We know that the focus of the statute,
15 which is the required the analysis for extraterritoriality is
16 on the wire transmissions. And the wire transmissions have to
17 be U.S. touching. They can either be interstate or
international, but they have to be U.S. touching.

18 Their say-so that this is global, therefore, they've
19 now converted a domestic statute into one with global reach, it
20 cannot be the case. It violates *Azeem* because the same thing
21 could have the been done in *Azeem*. The prosecutors could have
22 said, there's a global scheme to distribute Pakistani heroin,
23 including to the United States, and that charge would be no
24 different from our charge. To permit that kind of charge
25 manipulation is contrary to the guidelines considered choice to

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2 base sentencing based on real offense conduct, not on charging
3 decisions by the prosecutors, by and large there are
4 exceptions. For the prosecutors to say this is a global
5 scheme, or for the prosecutors to say, these defendants
6 conspired to violate the laws of Egypt and Pakistan and the
7 United States as part of the same scheme; therefore, please
8 include all four kilograms of heroin. That violates the
9 fundamental principle which has been articulated by the Supreme
Court that we don't punish foreign crimes in U.S. courts.

10 THE COURT: And perhaps, Mr. Weddle, that sounds to me
11 like an argument that should have been made prior to pleading
12 guilty to the crime that was charged.

13 MR. WEDDLE: I disagree, your Honor. Obviously we
14 thought -- we knew all about this argument, and we discussed it
15 transparently with the prosecutors before pleading guilty.

16 THE COURT: But there was no agreement?

17 MR. WEDDLE: There was no agreement. Pleading guilty
18 is not an admission or a concession of anything in the
19 indictment, except what the defendant allocute to. It's the
20 allocution which is the admission. The allocution covers the
21 elements of a domestic U.S. wire fraud. Mr. Greenwood cannot
22 convert the reach of Section 1343 into anything broader than
23 what Congress said it reaches, anymore than the prosecutors
24 can. And the sort of this -- this is the wrong phrase to use
25 because I'm not trying to attribute any kind of ill-intent to

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2 anyone. The kind of slight of hand of calling it a worldwide
3 fraud or calling it a worldwide --

4 THE COURT: It was in fact a worldwide fraud, right.
5 Even if I were to accept your argument, this was a fraud that
6 was international in scope, that had co-conspirators and people
7 actively working on behalf of it, not only in the United States
8 and Bulgaria, but in dozens of other countries. It raises a
9 policy question, how are we supposed to attack as a society and
10 prosecute these international schemes or schemes that are
11 international in scope if we're not able to take into account
the entirety of the criminal conduct?

12 MR. WEDDLE: I don't disagree with anything that your
13 Honor said, except that, that's a policy question for the
14 United States Congress. And the United States Congress has
15 answered the question by making Section 1343 domestic not
16 extraterritorial. They've answered the question by adopting
17 the guidelines without a reference to foreign criminal conduct.
18 They've answered the question, according to the Second Circuit
19 in *Azeem*, by choosing elsewhere in the guidelines to take
20 account of foreign activity. And the other Second Circuit
21 authorities that we cite in our brief like; for example, the
22 *Greer* case, there are the situations where Congress has made a
23 different policy choice.

24 Like, for example, in the *Greer* case, the crime at
25 issue was -- I'm going to get the name wrong. It was like the

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1 maritime distribution of narcotics act or something like that,
2 MD something or other. And that said if you're distributing
3 narcotics in the territorial waters of another country, that's
4 a violation of U.S. law if the other country consents to
5 prosecution here in the United States. So that's a different
6 calibration of that policy question, your Honor. It's not a
7 policy question that should be answered by prosecutors, and
8 it's not a policy question that respectfully should be answered
9 by judges. That violates -- to do so violate another
10 fundamental principle which is the principle of legality.

24 All of those things say we cannot take it upon
25 ourselves as prosecutors or courts to police even a worldwide

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2 fraud when Congress has made a different policy determination.
3 And that same policy determination is most clearly made, maybe
4 not most clearly made, is also clearly made in the wire fraud
5 statute because there is -- remember when I talked about the
romanette?

6 THE COURT: Sure.

7 MR. WEDDLE: There is one of those definitions that
8 includes the word "fraud." But it's not just fraud simple, full
9 stop. It says, it is a specified unlawful activity with
10 respect to a financial transaction occurring in whole or in
11 part in the United States within the definition of specified
12 unlawful activity is an offense against a foreign nation, not a
13 U.S. crime, a foreign crime, involving fraud or any scheme or
14 attempt to defraud by or against a foreign bank as defined in
15 blah, blah, blah. So Congress made a specific choice there.
16 And they said, you know what is a specified unlawful activity,
17 a fraud by or against a foreign bank that violates, let's say,
18 the law of Bulgaria, the criminal law of Bulgaria, but not all
19 fraud, not the *Artful Dodger's* pickpocketing.

20 THE COURT: Let me ask you this one last question,
21 Mr. Weddle, then I'll let you sit down. Do I have to in order
22 to rule in your favor determine that whatever aspect of the
23 wire fraud was committed in the U.S. was limited to the U.S.?
24 I'm not talking about the money laundering now, but whatever
25 other aspects of the actual wire fraud. So to the extent that

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2 any activity took place in the United States concerning the
3 wire fraud that I have to limit the reach of that activity to
4 the U.S. boundaries.

5 MR. WEDDLE: No. If it's using a wire that's a U.S.
6 wire, it can reach all around the world. A wire from New York
7 to Bulgaria is included.

8 THE COURT: Then I come back to the question I asked
9 earlier. How do we determine what the reach of that was;
10 whether what initiated the wire was some falsity that was
11 stated here in the U.S., but I get your point.

12 MR. WEDDLE: This is, as I said before, this is a
13 special case because most likely it didn't, and so we figure it
14 out with evidence just like we normally do. But in a case
15 where you got at least 99 percent non-U.S. conduct, there's a
16 very small chance that some wire that doesn't touch the United
17 States -- I would submit no chance that a wire between China
18 and Bulgaria had anything to do with what anyone was saying
19 while they were sitting in the U.S. or using a U.S. wire. It's
20 a speculation in this case, whereas in cases where the tables
21 were turned and you have 99 percent of the transactions
22 involving the U.S., you've might come out on that differently.
23 And so, you know what, it's a reasonable approximation, or the
24 probable cause standard is met.

25 And that's like one of the cases in the district court
where there was 14 U.S. entities and bank accounts, and one

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2 Indian bank account. And you might say, well, it's conceivable
3 that there were victims sending money from outside of the U.S.
4 in Canada to an Indian entity in order to transmit their
5 payment that was fraudulently obtained. But, the reality was
6 it didn't matter in that case because the guidelines were -- I
7 don't know the percentages are. I can't do in my head that
8 fast. But If you got 14 out of 16 fully domestic operating
9 entities the way it almost always happens is that way, it's not
10 going to move the needle in the guidelines to worry about that
11 15th entity in India and how much money went there from purely
non-U.S. Canadian victims.

12 THE COURT: Thank you. Mr. Mead.

13 MR. MEAD: Thank you, your Honor. We agree that Azeem
14 is a very different case than this one, and I want to focus on
15 one of the reasons why that is so, and that's the offense of
16 conviction argument that we made in our brief. The sentencing
17 guidelines typically call for courts to consider three
18 categories of conduct as relevant to sentencing. One of them
19 is the offense of conviction itself, the core of the criminal
20 conduct that the defendant was convicted of. The other two are
21 the common scheme or plan and the same course of conduct.

22 In this case, the losses to foreign victims aren't
23 just part of a course of conduct, they are all part of the
24 offense of conviction itself. How do we know that? We can
25 look at the information. We can look at the allocution, and we

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2 could look at the actual evidence in this case. As to the
3 information, the charging language in the case. Greenwood and
4 others made statements "soliciting individuals throughout the
5 world to invest in OneCoin, resulting in the receipt of over
6 \$1 billion of investor funds into OneCoin related bank
7 accounts." This case was charged as one scheme, as one
8 conspiracy. It wasn't charged as four million separate frauds
9 one directed against each potential victim, and it was
explicitly charged as an international scheme in this case.

10 The allocution. The defendant admitted in his
11 allocution to participating in a single fraud scheme. He also
12 admitted that it was an international scheme. He refers in his
13 allocution -- and this language is on page 16 of our brief,
14 your Honor -- he refers to the fact that for part of the time
15 the scheme targeted the United States; meaning, by definition,
16 that it must have targeted other places at other times.

17 Now, as to the evidence. I'm not going to belabor
18 this point because the Court is of course quite familiar with
19 OneCoin at this point. OneCoin was, as a matter of fact, a
20 single massive fraud scheme. It operated as a highly
21 coordinated international scheme with the defendant *Ruja*
22 *Ignatova* at the center. It promoted a single product to its
23 customers all around the world, the OneCoin cryptocurrency, and
24 it's actually in the name itself. It's called OneCoin. They're
25 selling one product. There was one global headquarters in

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2 Bulgaria, and multi-level marketing schemes like OneCoin are by
3 their very nature interconnected. They rely on constantly
4 recruiting new individual victims and expanding into new
5 markets, such that victims in all sorts of countries might be
6 convinced in part by the fact that OneCoin is operating in the
United States and recruiting victims in the United States.

7 And equally importantly, the money in this case was
8 being laundered in large part by United States-based money
9 launders, who supervised the laundering of approximately \$700
10 million from the United States, and that is itself a number
11 that maxes out the fraud guidelines.

12 Now, let's talk about *Azeem* and why it's different
13 here. All *Azeem* says is that when you're talking about the
14 same course of conduct bucket in a narcotics case, that
15 conduct, conduct that is totally foreign does not count. *Azeem*
16 does not deal with crimes that are part of the offense of
17 conviction itself. And the foreign conduct at issue in *Azeem*
18 actually couldn't have been part of the conviction itself,
19 because the crime that *Azeem* was convicted of was conspiring to
20 import heroin into the United States. The foreign conduct was
21 the transportation of heroin from Pakistan to Egypt. And by
22 definition, the transportation of heroin from Pakistan to Egypt
23 is not part of the crime of importing heroin into the United
24 States.

25 It's a simple two-step argument. Step one is that

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2 Azeem does not limit the consideration of foreign conduct when
3 that foreign conduct is part of the offense of conviction. And
4 step two is, the information, the evidence, and the defendant's
5 own allocution make clear that the offense of conviction in
6 this case was the single massive international OneCoin fraud
and conspiracy.

7 THE COURT: But I think that the defense would say,
8 look, I grant you that you perhaps have proven a global scheme.
9 However, here in the United States, you can only go as far as
10 the particular criminal statutes will allow you to go. And so
11 even though you've proven this massive fraud, we can only go as
12 far as the borders of the United States. And even with respect
13 to the money laundering count, which is an extraterritorial
14 count, that also only goes as far as the underlying statutes
15 will go, and the wire fraud statutes are not extraterritorial,
16 so why shouldn't -- why don't doesn't that argument win the
17 day?

18 MR. MEAD: We of course can't charge purely foreign
19 crimes, unless there's an extraterritorial statute, but that's not
20 what's happening here. This crime involves United States
21 wires. There's no dispute whatsoever that they're promoters in
22 the United States and they're people recruiting victims in the
23 United States, and victims in the United States are sending
24 wires. This big scheme has plenty of domestic wires in it,
25 which is why it's a case that we could charge, and which is why

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2 the defendant could plead guilty to it.

2 THE COURT: But the domestic wires to Mr. Weddles's
3 point are a small percentage of the overall illicit proceeds,
4 correct?

5 MR. MEAD: That's correct, your Honor, yes. The
6 domestic victims are a relatively small percentage of the total
7 victims in this case.

8 THE COURT: And, therefore, is there something to the
9 argument that -- well, this is the United States victims as the
10 tail wagging, the global victims is the dog; and therefore it
11 would be improper for me to include those additional victims?

12 MR. MEAD: I think all that's required here is that
13 there be some domestic wires, and that's clearly the case here.

14 THE COURT: As long as there's a tail here, we're
15 good?

16 MR. MEAD: I think any other rule is both outside the
17 language of the statute and totally un-administrable.
18 Otherwise the Court would have to say, well, you have to prove
19 50 percent or 75 percent or something, and there's no line that
20 makes any sense, I think, once you prove that there's some
21 domestic wires in the case, and there clearly are here.

22 THE COURT: Okay.

23 MR. MEAD: I want to talk a little bit about the
24 policy bases here and what the alternative that the defendant
25 wants the law to be is. If the defendant is right, loss amount

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2 liability under the guidelines can very hugely based on minor
3 factual quirks if a co-conspirator happens to send a critical
4 email while he's on a layover in the United States, maybe his
5 guideline amount is vastly higher than it would be otherwise,
6 despite those facts of course having nothing to do with the
defendant's real world culpability.

7 If the defendant is right, then as the Court gestured
8 at, this procedure becomes very difficult to administer. You
9 need to figure out whether a victim in China may have heard a
10 webinar in the United States, and that was part of the reason
11 that he was convinced to invest in OneCoin. And most
12 importantly, if the defendant is right about the law, then in
13 order to hold the defendant and people like him fully
14 responsible for a huge international fraud like that, what
15 needs to happen is that he's supposed to be separately
16 prosecuted and convicted in dozens of different countries in
17 order to hold him fully responsible. And that's of course not
18 the law. When someone like the defendant is convicted of
19 participating in a single huge fraud scheme like this one, and
20 when at least some of the wires are domestic, he should be held
21 responsible for the full loss of the scheme, which is what
22 accurately captures his culpability.

23 I just want to address one or two additional points
24 the defendant raised. One is the case *Khodadad*. The
25 government made a concession in a brief in 1995. I don't think

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2 there's any argument here that that concession is binding on
3 the government in this separate case. There's no argument that
4 the Second Circuit decision is binding either. It's an
5 unpublished decision in which -- in I believe a footnote. It
6 relies entirely on the government's concession. And most
7 importantly *Khodadad* is entirely consistent with the
8 government's offense of conviction argument because there the
9 indictment explicitly referred to a single painting. And at
10 sentencing, the loss amount was enhanced based on additional
paintings not described in the indictment.

11 Onto the money laundering point. First off, the money
12 laundering point doesn't matter at all if the Court rules in
13 the government's favor on the wire fraud point, because that
14 will drive the guidelines. But there are a couple of different
15 reasons why the defense is getting the money laundering point
16 wrong. First, as we've explained, the fraud here is the wire
17 fraud. The full wire fraud was the full loss amount.

18 Second, as to the specified unlawful activities. In
19 the definitional section of 18, U.S.C., 1961 listing various
20 specified unlawful activities, one of them is fraud in the sale
21 of securities not tethered to any sort of underlying criminal
22 statute, which would be covered in this case. And also
23 important --

24 THE COURT: Is crypto a security?

25 MR. MEAD: Yes, it is, your Honor. That's our view.

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2 THE COURT: That's your view. Has that been
3 established?

4 MR. MEAD: Just a second, your Honor.

5 (Counsel conferred)

6 MR. MEAD: We charge a securities fraud count in this
7 case. Our view is, it's plainly a security. The defense may
8 disagree with that point, but our view is that it is plainly a
9 security, and it was charged as such in this case.

10 THE COURT: And I'm not putting you on the spot,
11 Mr. Mead, but what is the state of play in the Circuit or
12 across the Circuit concerning whether or not crypto is a
13 security?

14 MR. MEAD: I don't think it's been decided by the
15 Circuit one way or the other, your Honor.

16 THE COURT: Or any other Circuit?

17 MR. MEAD: Not to my knowledge. It's a hot issue
18 that's being contested, but I'm not sure that there's any
19 Circuit law on it.

20 THE COURT: Okay.

21 MR. MEAD: And, finally, I direct the Court to -- in
22 the same list that the defendant was pointing to, Section
23 1956(c)(7)(B)(vi), and that's a list of foreign crimes that can
24 constitute specified unlawful activity. And number six is an
25 offense with respect to which the United States would be
obligated by multi-lateral treaty, either to extradite the

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2 alleged offender or to submit the case for prosecution if the
3 offender were found within the territories of United States.
4 That's basically saying if the crime would be subject to
5 extradition, it's a crime where you can prosecute the
6 laundering of those proceeds. And I'm not going to say that
7 we've done a country by country analysis of every single
8 country where there were victims in this case, but of course
9 fraud is typically a crime that is subject to extradition.

10 THE COURT: And, in fact, you've extradited someone?

11 MR. MEAD: I think it means the opposite, your Honor,
12 such that the United States would be obligated to extradite
13 someone to the --

14 THE COURT: -- to the other country.

15 MR. MEAD: Yes, your Honor. And I don't want to
16 belabor the money laundering point too much. Again, the wire
17 fraud itself is part of the offense of conviction in this case,
18 and for that reason the defendant should be held fully liable
19 for the full losses he caused.

20 THE COURT: Okay. Anything else, Mr. Weddle?

21 MR. WEDDLE: Very briefly, your Honor. I think that
22 this idea that we're hearing now for the first time today about
23 securities transaction being a specified unlawful activity.
24 It's not charged in the information as the specified unlawful
25 activity that is the predicate for the money laundering charge
here. It wasn't admitted by my client. It is highly

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2 questionable whether cryptocurrency is a security. It's not
3 clear to me under which countries' laws that would be decided.
4 And, your Honor -- and I think the government knows full-well
5 that they have *Brady* material in their discovery about
6 discussions that government actors had with other law
7 enforcement actors around the world about whether or not
8 cryptocurrency could be a security. And even if cryptocurrency
9 is a security, the charge here is that this was fake. I have
10 no idea how, even if a cryptocurrency can be a security, a not
11 cryptocurrency can also be a security. That's totally without
any support or precedent.

12 But I think, your Honor, this kind of bobbing and
13 weaving demonstrates the wisdom and the binding nature of the
14 *Azeem* rule; which is, Why should we be involved in trying to
15 figure out whether Bulgarian law would count OneCoin as a
16 security. It's a morass. And sovereigns should enforce their
17 own law. The buckets that we've described are the buckets that
18 are United States wire fraud. They're within the scope of what
19 Congress has decided. And those losses and that conduct is the
20 conduct that is within the scope of the sentencing guidelines
21 according to *Azeem*'s analysis and holding of the sentencing
22 guidelines.

23 And nothing about the wording of count of conviction,
24 nothing about common scheme or plan versus common course of
25 conduct, none of those things avoid the interpretative

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2 methodology of *Azeem*; which is, *Azeem* says, listen, for the
3 sentencing guidelines, if there's a specific reference to
4 taking into account some kind of foreign characteristics, then
5 do it. The fact that there are such references tells you that
the general rule is absent an explicit reference, don't do it.

6 To do otherwise wades into a morass of international
7 questions of law, and it violates the general principle that we
8 shouldn't be enforcing other sovereigns laws. And I submit
9 that because the wire fraud statute is domestic, this is
exactly the same as *Azeem*. In the words of Mr. Mead, you can't
10 charge importation of heroin into Egypt as a violation of U.S.
11 law because that's not within the scope of U.S. criminal
12 statute. For the same reason, you can't charge fraud that is
13 committed without the use of U. S. wires as a violation of
14 Section 1343. It's outside the scope of the statute. And the
15 prosecutors say so cannot expand the scope of that statute or
16 undue Congress's decision about the scope of that statute.
17 Thank you, your Honor.

18
19 THE COURT: Thank you. I'm going to take five
20 minutes, be right back out.

21 (Recess)

22 THE COURT: I actually don't know what the procedural
23 process of this is, but to the extent it's a motion by the
24 defense to exclude the international aspect of the scheme, the
25 motion is denied.

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1 First of all, I'm not going to resolve the issue of
2 whether or not crypto is a currency, nor do I think I have to.
3 I think the government is correct, although it is the first
4 time I've had an opportunity to review and analyze Azeem, and I
5 do think it's a close case, but I don't think that this case is
6 like Azeem. As the government argues, and as I believe
7 convincingly, the crime that was charged in this case was a
8 unitary international scheme that was run in substantial part,
9 at least the money laundering part, out of the United States.
10 And not only that, but other aspects of the crime are also run
11 out of the United States at times. And where there is a large
12 scheme, a large international scheme, I do not believe that the
13 United States loss, even those that are not extraterritorial do
14 not require that those schemes be chopped up into individual
15 countries.

16 And because of that, because the scheme that was
17 charged was international in scope, and because the various
18 aspects, each of the various aspects of the scheme was carried
19 out, at least in part in the United States, and certain aspects
20 of which were carried out in substantial part out of the United
21 States as I understand it, the primary money launderers for
22 OneCoin were Mr. Armenta and Mr. Scott. They were based in the
23 United States I think at all times during their involvement in
24 the scheme. Mr. Scott actually had been found guilty by a
25 jury, and Mr. Armenta having pled guilty. And because it was

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2 both (A) not only charged as an international unitary scheme,
3 but was carried out as an international unitary scheme, I
4 believe that it would be perfectly appropriate to include the
5 totality of the illicit activity in the calculation of the
applicable guidelines range.

6 As Mr. Weddle, however, has also suggested, this may
7 be in large part an academic exercise, but I have said on the
8 record on previous occasions that in my view the guidelines
9 tables concerning financial frauds are inflated. And although
10 I am of course and will calculate the guidelines as accurately,
11 correctly, and I will consider them, if the maximum term that
12 Mr. Greenwood is facing is 60 years, I can't foresee that he
13 will be sentenced to anything close to approaching 60 years.
14 But that of course is a matter for another day.

15 Now in keeping with the approach that was suggested, I
16 think without objection by the government, what do we do next?

17 MR. WEDDLE: Can I take credit, your Honor? I think I
18 suggested the approach.

19 THE COURT: Mr. Weddle.

20 MR. WEDDLE: Well, I think, your Honor if we could
21 just put it down for a control date sometime in the future, and
22 then why don't we spend sometime talking to the prosecutors now
23 that we've gotten your ruling on this legal issue about whether
24 there are guidelines issues that we want to contest in a
25 factual way or a legal way. But let's just see sort of how

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2 things shake out in the next few weeks, and then propose maybe
3 by letter either that we move, that we set out a schedule for
4 stage three based on no disputed facts, or that we set out a
schedule for resolving disputed facts.

5 THE COURT: I'm happy to do that, assuming there's
6 agreement with the government and it's a reasonable period of
7 time. I have to tell you, Mr. Weddle, I was getting scared
8 about the potential *Fatico* issues that you were suggesting we
9 take on if I were to have ruled in your favor; not that that
10 swayed me one way or another.

11 MR. WEDDLE: I hope they didn't, your Honor. I don't
12 want to do the government's job for them, but I think they have
13 bank records that they could add up to a number. But, anyway,
14 that's water under the bridge at this point. I do want to do
15 some research and make sure that I'm not waiving factual issues
16 relating to this legal decision that your Honor has made; or
17 that I'm improperly preserving for appeal this legal issue,
18 notwithstanding not fighting about facts given this legal
19 issue. So I just want to do a little bit of research on that,
20 but I think -- I don't think that we're going to need a *Fatico*
21 hearing on whether the loss amount is in the \$500 million
22 range. I don't want to promise that for sure. I think we
23 should kick the tires and think about your Honor's decision and
24 see if there are portions of the prosecutor's *Pimentel* letter
25 that are subject to reasonable dispute that we should really

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2 present to your Honor; or if we should move onto 3553(a)
3 factors. I would propose something like a three-week period of
4 time to report back with a proposal by letter. I haven't had a
5 chance to talk to the prosecutors about it, about what the next
steps are.

6 THE COURT: That's fine with me. If you do determine
7 that a subsequent hearing prior to sentencing is necessary, it
8 would be helpful if you could sketch out the contours of what
9 that type of hearing would be before me in conjunction with the
10 government. Okay. Mr. Mead.

11 MR. MEAD: That's fine with the government three weeks
12 from now as a date to submit a letter about whether there are
13 factual disputes that require a hearing is fine with the
14 government.

15 I do want to ask the Court to exclude time under the
16 Speedy Trial Act. As the Court may remember from the plea, a
17 handful of counts remain outstanding, and we'd just like to
18 exclude time to some sort of control date, either the three
19 week date or perhaps a date 60 days out.

20 THE COURT: Mr. Weddle.

21 MR. WEDDLE: No objection, your Honor.

22 THE COURT: I will exclude the time between now and
23 the three weeks, and we'll get that exact date from Ms. Rivera.
24 Under the Speedy Trial Act, I find that Mr. Greenwood's
25 interest in excluding that time outweigh the interest of the

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2 public in a speedy trial in order that we might as best as we
3 can make the appropriate determination of what the appropriate
4 guidelines range should be.

5 Ms. Rivera.

6 THE DEPUTY CLERK: Yes. May 2, 2023.

7 THE COURT: So by that date you should at least submit
8 a letter to the Court. Anything else that we should do?

9 MR. MEAD: Nothing from the government, your Honor.

10 THE COURT: Mr. Weddle?

11 MR. WEDDLE: No, your Honor.

12 THE COURT: We're adjourned. Thank you, everyone.

13 (Adjourned)

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